

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,
Plaintiff in Error,
vs.
JOSEPH J. SCOTT, as Collector of Internal Revenue
Fourth California District,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

APR 24 1916

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Northern
District of California.*

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue
Fourth California District,

Defendant.

Complaint.

FIRST CAUSE OF ACTION.

Comes now the plaintiff above named and for a
first cause of action against the defendant alleges:

I.

That the plaintiff is a corporation duly organized
and existing under the laws of the State of Wyoming
and doing business in the State of Nevada and hav-
ing its principal office and place of business in Gold-
field, County of Esmeralda, State of Nevada.

II.

That the defendant is a duly appointed, qualified
and acting Collector of Internal Revenue of the
Department of the Treasury of the United States of
America for the 4th District of California, which
District includes the State of Nevada, and as such
Collector of Internal Revenue, is a duly qualified and
authorized successor in office to one W. A. Shippee,
who was prior to the — day of —, 19—, the
Collector of Internal Revenue for said District and
predecessor in office of said Jos. J. Scott, and as such

qualified Collector of Internal Revenue has succeeded to all of the duties, obligations and legal liabilities which existed at the time of the going out of office of the said W. A. Shippee as aforesaid and all of said legal liabilities, duties and obligations remain in full force and effect as to said successor in office, the [1*] defendant, Jos. J. Scott, the present Collector of Internal Revenue for said District.

III.

That on or about the 30th day of June, 1910, the said W. A. Shippee, acting in his then official capacity as Collector of Internal Revenue as aforesaid, and assuming to act in such capacity under the act of Congress, approved August 5th, 1909, entitled "An Act to provide revenue; equalize duties and encourage the industries of the United States and for other purposes," and assuming to act particularly under section 38 of said act, did by force and duress and threat of statutory penalties, exact, demand and collect from said plaintiff the sum of \$41,890.91, claiming the said sum to be a tax lawfully levied under an assessment, likewise claimed to have been lawfully assessed under said act on account of tax alleged to be due thereunder from said plaintiff to the United States of America for the year ending December 31st, 1909.

IV.

That said tax of \$41,890.91 was imposed upon this plaintiff and collected by said United States through W. A. Shippee, the then Collector of Internal Revenue, pursuant to a pretended assessment of the net

*Page-number appearing at foot of page of original certified Record.

income of the plaintiff for the said year upon a pretended assessment thereof of \$4,189,091.61, the said tax being at the rate of one per cent calculated thereon.

V.

That said sum of \$41,890.91 was paid from the funds and property of said plaintiff as aforesaid involuntarily and under a written protest, said plaintiff protesting that it was not liable to said assessment and to the payment of said tax, for the reasons more fully set forth in said protest and in part for the reason that under said act of Congress as aforesaid, the plaintiff was entitled to a deduction against its gross income for the [2] item of depreciation fully explained and set forth in its return of annual net income for the year 1909 for the value in the ground before it was mined of 230,463 tons of ore of the value in the ground before it was mined of \$5,646,940.46, which ore constitutes exhaustion of the capital value of the property owned by said plaintiff as in said protest and in said return of annual net income was fully set forth and deduction claimed therefor by reason thereof.

VI.

That thereafter and on or about August 2d, 1911, this plaintiff duly filed with said W. A. Shippee, the then Collector of Internal Revenue as aforesaid, a claim for the refunding of said tax of \$41,890.91 so collected as aforesaid on form 46 as revised November, 1907, which said claim was sworn to by A. H. Howe, Secretary and Treasurer of the plaintiff corporation and on its behalf according to law and

appealed to the Commissioner of Internal Revenue of the United States from the action and decision of the said W. A. Shippee, the then Collector of Internal Revenue as aforesaid, and thereunder and thereby pursuant to law asked for and claimed to have refunded the said tax, and represented to the Commissioner of Internal Revenue that the same should be refunded for the following reasons: "That the act of Congress approved August 5th, 1909, and department regulations thereunder, entitled the Goldfield Consolidated Mines Company, claimant herein, to a deduction against net income equal to the value in the ground before it was mined of all ores mined and removed during the year to which the return related and for which the tax was assessed which claimed deduction was shown, by slip attached to the return of annual net income and made a part thereof, to amount to the sum of \$5,646,940.46, and all of which mining constituted an exhaustion of the capital assets of the Goldfield Consolidated Mines Company and a depreciation within the meaning of the act in question, [3] which deduction should have been allowed and would have more than offset the total net income of the company; and protest was seasonably made at the time of the payment of said tax upon that ground."

VII.

Plaintiff furthermore alleges that after the filing of this claim for refund of the said tax as hereinabove set forth, and while said claim and appeal were pending before said Commissioner of Internal Revenue, this plaintiff by its duly authorized officials

appeared before the said Commissioner of Internal Revenue and there made full explanation and offered full proof of the correctness in all respect to the Commissioner of its return of annual net income for the year 1909 and of all statements of fact contained therein, and of its reasons for the support of said claim of refund, and during the pendency and consideration of said claim by said Commissioner of Internal Revenue, this plaintiff was duly and regularly granted by said Commissioner until and including the 24th day of January, 1912, within which to fully comply with the rules and regulations of the Treasury Department and the further requirements of the Commissioner of Internal Revenue, within which time the plaintiff was also given leave to present to the said Commissioner of Internal Revenue an amended statement and return of annual net income of said plaintiff for the year 1909, together with explanations of fact in support thereof, and among the requirements so made by the said Commissioner of Internal Revenue together with rules and regulations of the Treasury Department, this plaintiff was instructed to and did ascertain the unit cost per ton of the estimated ore bodies belonging to the plaintiff in its various mining properties as of January 1st, 1909, and the estimated value of the ore in the ground before it was mined for the year 1909, by multiplying the said ascertained unit cost per ton by the total number of tons [4] mined in said year 1909; furthermore this plaintiff was required by the said Commissioner of Internal Revenue and did by a like calculation for the said year 1909, and all

previous years, ascertain the total exhaustion of ore which at that time had taken place in the operation of its mining properties, and having so ascertained said amount, was required by the Commissioner of Internal Revenue and did enter the corresponding amount thereof of said tonnage exhausted multiplied by said unit cost per ton in its official corporate books of account, and did furthermore, pursuant to said requirements of said Commissioner, in its printed annual report of that current year make explanation to all of its stockholders and to the public that such changes and corrections had been made in its books of account, which changes were then and there shown in the figures and statements contained in said annual report, and did thus make full explanation to all of its stockholders and to the public of its reasons as hereinabove set forth for the making of such changes; that by making said calculations and changes and by basing its amended return on the result thereof, which amended return of annual net income was duly filed within the time granted for the making and filing of said return as hereinabove set forth, it was made to appear to the Commissioner of Internal Revenue that said plaintiff, while not waiving its claim to the full deduction for depreciation, asked for and claimed in its original return of annual net income for the year 1909, nevertheless found and reported that by strict compliance with the rules, regulations and requirements of the Treasury Department as hereinabove set forth and by applying the unit cost per ton to the tonnage so mined it was even under said rules, regulations and

requirements entitled to the deduction for depreciation therein of the sum of \$3,770,374.68, and that including the said deduction together with the statutory deduction of \$5,000 provided by law resulted in a [5] showing of net income subject to the tax of \$765,380.02, and this plaintiff further alleges that according to the rules and regulations and requirements of the Treasury Department of the United States and of the Commissioner of Internal Revenue said amount subject to the tax is correct and true in all respects; nevertheless, in disobedience and disregard of the law and of the rules and regulations of the Treasury Department, the Commissioner of Internal Revenue for the 4th District of California, defendant herein, did disallow and refuse to recognize the claim and appeal of this plaintiff for the refund of said tax or any part thereof.

VIII.

That thereafter on or about the 29th day of December, 1913, the Collector of Internal Revenue, Joseph J. Scott, defendant herein, did, claiming to act, pursuant to the instructions of the Commissioner of Internal Revenue, disallow and deny in whole the said plaintiff's said claim and appeal for the refund of said tax, and did notify said plaintiff to this effect.

IX.

That no part of said tax of \$41,890.91 has been refunded or paid back or returned to said plaintiff or to any person or at all, and that said sum is still due and unpaid.

SECOND CAUSE OF ACTION.

For a second, further and separate cause of action against the defendant, plaintiff alleges: -

I.

That the plaintiff is a corporation duly organized and existing under the laws of the State of Wyoming and doing business in the State of Nevada and having its principal office and place of business in Goldfield, county of Esmeraldo, State of Nevada. [6]

II.

That the defendant is a duly appointed, qualified and acting Collector of Internal Revenue of the Department of the Treasury of the United States of America for the 4th District of California, which district includes the State of Nevada, and as such Collector of Internal Revenue, is a duly qualified and authorized successor in office to one W. A. Shippee, who was prior to the — day of —, 19—, the Collector of Internal Revenue for said district and predecessor in office of said Jos. J. Scott, and as such qualified Collector of Internal Revenue has succeeded to all of the duties, obligations and legal liabilities which existed at the time of the going out of office of the said W. A. Shippee as aforesaid, and all of said legal liabilities, duties and obligations remain in full force and effect as to said successor in office, the defendant, Jos. J. Scott, the present Collector of Internal Revenue for said district.

III.

That on or about the 14th day of August, 1911, the said W. A. Shippee, acting in his then official capacity as Collector of Internal Revenue as aforesaid

and assuming to act in such capacity under the act of Congress, approved August 5th, 1909, entitled "An Act to provide revenue, equalize duties and encourage the industries of the United States and for other purposes," and assuming to act particularly under section 38 of said act, did by force and duress and threat of statutory penalties, exact, demand and collect from said plaintiff the sum of \$49,681.02, claiming the sum to be a tax lawfully levied under an assessment, likewise claimed to have been lawfully assessed under said act on account of tax alleged to be due thereunder from said plaintiff to the United States of America for the year ending December 31st, 1910. [7]

IV.

That said tax of \$49,681.02 was imposed upon this plaintiff and collected by said United States through W. A. Shippee, the then Collector of Internal Revenue, pursuant to a pretended assessment of the net income of the plaintiff for the said year upon a pretended assessment thereof of \$4,968,102.45, the said tax being at the rate of one per cent calculated thereon.

V.

That said sum of \$49,681.02 was paid from the funds and property of said plaintiff as aforesaid involuntarily and under a written protest, said plaintiff protesting that it was not liable to said assessment and to the payment of said tax, for the reasons more fully set forth in said protest, and in part for the reason that under said act of Congress as aforesaid, the plaintiff was entitled to a deduction against

its gross income for the item of depreciation fully explained and set forth in its return of annual net income for the year 1910 for the value in the ground before it was mined of 227,854 tons of ore of the value in the ground before it was mined of \$7,499,-406.14, which ore constitutes exhaustion of the capital value of the property owned by said plaintiff as in said protest and in said return of annual net income was fully set forth and deduction claimed therefor by reason thereof.

VI.

That thereafter and on or about August 2d, 1911, this plaintiff duly filed with said W. A. Shippee, the then Collector of Internal Revenue as aforesaid, a claim for the refunding of said tax of \$49,681.02 so collected as aforesaid on form 46 as revised November, 1907, which said claim was sworn to by A. H. Howe, Secretary and Treasurer of the plaintiff corporation, and on its behalf according to law, and appealed to the Commissioner of Internal Revenue of the United States from the action and decision of the said W. A. Shippee, the then Collector of Internal Revenue as [8] aforesaid, and thereunder and thereby pursuant to law asked for and claimed to have refunded the said tax and represented to the Commissioner of Internal Revenue that the same should be refunded for the following reasons: "The said tax purports to have been assessed for income taxes of said corporation for the year 1910. Claimant contends that the act of Congress, approved August 5th, 1909, and department regulations thereunder, entitled *The Goldfield Consolidated Mines*

Company, claimant herein, to a deduction against net income equal to the value in the ground before it was mined of all ores mined and removed during the year to which the return related, and for which the tax was assessed, which claimed deduction was shown, by slip attached to the return of annual net income and made a part thereof, to amount to the sum of \$7,499,406.14, and all of which mined ore constituted an exhaustion of the capital assets of The Goldfield Consolidated Mines Company, and its value in the ground constituted a depreciation within the meaning of the act in question, which deduction should have been allowed, and would have more than offset the total net income of the company; and protest was made upon that ground immediately prior to the payment of said tax.

“The time expired on June 1st, 1911, in which the Commissioner of Internal Revenue could assess a tax under said act, and no tax was assessed until long after, to wit, on or about July 28th, 1911, as more fully shown in protest, a copy of which is enclosed hereinwith.”

VII.

Plaintiff furthermore alleges that after the filing of this claim for the refund of the said tax as hereinabove set forth and while said claim and appeal were pending before said Commissioner of Internal Revenue, this plaintiff by its duly authorized officials appeared before the said Commissioner of Internal Revenue and there made full explanation and offered full proof of the correctness [9] in all respects to the Commissioner of its return of annual net income

for the year 1910 and of all statements of fact contained therein, and of its reasons for the support of said claim of refund, and during the pendency and consideration of said claim by said Commissioner of Internal Revenue, this plaintiff was duly and regularly granted by said Commissioner until and including the 28th day of January, 1912, within which to fully comply with the rules and regulations of the Treasury Department and the further requirements of the Commissioner of Internal Revenue, within which time the plaintiff was also given leave to present to the said Commissioner of Internal Revenue an amended statement and return of annual net income of said plaintiff for the year 1910, together with explanations of fact in support thereof, and among the requirements so made by the said Commissioner of Internal Revenue together with rules and regulations of the Treasury Department, this plaintiff was instructed to and did ascertain the unit cost per ton of the estimated ore bodies belonging to the plaintiff in its various mining properties as of January 1st, 1909, and the estimated value of the ore in the ground before it was mined for the year 1910 by multiplying the said ascertained unit cost per ton by the total number of tons mined in said year 1910; furthermore, this plaintiff was required by the said Commissioner of Internal Revenue and did by a like calculation for the said year 1910 and all previous years, ascertain the total exhaustion of ore which at that time had taken place in the operation of its mining properties, and having so ascertained said amount was required by the Commissioner of Inter-

nal Revenue and did enter the corresponding amount thereof of said tonnage exhaustion multiplied by said unit cost per ton in its official corporate books of account, and did furthermore, pursuant to said requirements of said Commissioner, in its printed [10] annual report of that current year, make explanation to all of its stockholders and to the public that such change and corrections had been made in its books of account, which changes were then and there shown in the figures and statements contained in said annual report, and did thus make full explanation to all of its stockholders and to the public of its reasons as hereinabove set forth for the making of such changes; that by making said calculations and changes and by basing its amended return on the result thereof, which amended return of annual net income was duly filed within the time granted for the making and filing of said return as hereinabove set forth, it was made to appear to the Commissioner of Internal Revenue that said plaintiff, while not waiving its claim to the full deduction for depreciation asked for and claimed in its original return of annual net income for the year 1910, nevertheless found and reported that by strict compliance with the rules, regulations and requirements of the Treasury Department as hereinabove set forth and by applying the unit cost per ton to the tonnage so mined, it was even under said rules, regulations and requirements entitled to a deduction for depreciation therein to the sum of \$4,545,691.44, and that including the said deduction, together with the statutory deduction of \$5,000 provided by law, resulted in

a showing of net income subject to the tax of \$428,459.97, and this plaintiff further alleges that according to the rules and regulations and requirements of the Treasury Department of the United States and of the Commissioner of Internal Revenue, said amount subject to the tax is correct and true in all respects; nevertheless in disobedience and disregard of the law and of the rules and regulations of the Treasury Department, the Commissioner of Internal Revenue for the 4th District of California, defendant herein, did disallow and refuse to recognize the claim and [11] appeal of this plaintiff for the refund of said tax or any part thereof.

VIII.

That thereafter on or about the 29th day of December, 1913, the Collector of Internal Revenue, Joseph J. Scott, defendant herein, did, claiming to act pursuant to the said instructions of the Commissioner of Internal Revenue disallow and deny in whole the said plaintiff's said claim and appeal for the refund of said tax, and did notify said plaintiff to this effect.

IX.

That no part of said tax of \$49,681.02 has been refunded or paid back or returned to said plaintiff or to any person or at all, and that said sum is still due and unpaid.

X.

The plaintiff further alleges that on June 1st, 1911, expired the time in which the Commissioner of Internal Revenue had power under the law to assess the tax under said act of Congress, and no taxes were

in fact assessed until long after the said date, to wit, on or about July 28th, 1911, as more fully shown in the protest filed by the plaintiff at the time of payment of said tax.

WHEREFORE the plaintiff prays for judgment against the defendant in the sum of \$41,890.91, on account of the matters and things set out in the first cause of action herein and for the sum of \$49,681.02 on account of the matters and things set out in the second and separate cause of action hereinabove set out, and for its costs, and for such further relief as may be just in the premises.

HENRY M. HOYT,
L. A. GIBBONS,
L. N. FRENCH,

Attorneys for Plaintiff, Reno, Nevada. [12]

State of Nevada,
County of Esmeralda,—ss.

A. H. Howe, being first duly sworn, deposes and says that the above-named plaintiff is a corporation; that he is an officer of said plaintiff, to wit, the Secretary thereof, and makes this affidavit on behalf of said Corporation; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

A. H. HOWE.

Subscribed and sworn to before me this 16 day of June, 1914.

[Seal]

S. D. EUBANK,
Notary Public in and for the County of Esmeralda,
State of Nevada.

[Endorsed]: Filed June 22d, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[13]

Summons.

UNITED STATES OF AMERICA.

*District Court of the United States, Northern
District of California, Second Division.*

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Action brought in said District Court, and the Complaint filed in the office of the Clerk of said District Court, in the City and County of San Francisco.

HOYT, GIBBONS & FRENCH,

Plaintiff's Attorneys.

The President of the United States of America,
Greeting: To JOSEPH J. SCOTT, as Collector
of Internal Revenue, Fourth California District,
Defendant.

YOU ARE HEREBY DIRECTED TO AP-

PEAR, and answer the complaint in an action entitled as above, brought against you in the District Court of the United States, in and for the Northern District of California, Second Division, within ten days after the service on you of this Summons—if served within this county; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiff will take judgment for any money or damages demanded in the complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 22d day of June in the year of our Lord one thousand nine hundred and fourteen and of our Independence the one hundred and thirty-eighth.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [14]

United States Marshal's Office,
Northern District of California.

I HEREBY CERTIFY, that I received the within writ on the 22 day of June, 1914, and personally served the same on the 22 day of June, 1914, *upon* by delivering to, and leaving with Jos. J. Scott, as Collector, etc., said defendant named therein personally, at the City of S. F., County of San Francisco, in said District, a certified copy thereof, together with a

copy of the complaint, certified to by _____,
attached thereto.

J. B. HOLOHAN,
U. S. Marshal.
By Thos. F. Mulhall,
Office Deputy.

San Francisco, June 22, 1914.

[Endorsed]: Filed Jun. 23, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Demurrer to Complaint.

Now comes Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, defendant in the above-entitled action, and demurs to the complaint of the plaintiff on file herein and to each of the counts in said complaint contained, and for grounds of demurrer specifies:

I.

That the said complaint does not state facts suffi-

cient to constitute a cause of action against the defendant.

II.

That the first count of said complaint does not state facts sufficient to constitute a cause of action against the defendant.

III.

That the second count of said complaint does not state facts sufficient to constitute a cause of action against the defendant.

WHEREFORE, having fully answered said complaint, said defendant prays that it may be hence dismissed and that the defendant have judgment for costs of suit incurred herein.

JNO. W. PRESTON,
United States Attorney,
Attorney for Defendant.

M. A. THOMAS,
Assistant United States Attorney. [16]

The undersigned, one of the attorneys for the said defendant Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, hereby certifies that in his opinion the foregoing demurrer is well founded in point of law and that it is not interposed for delay.

M. A. THOMAS.

[Endorsed]: Filed Jul. 2, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk, [17]

At a stated term, to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the 29th day of November, in the year of our Lord one thousand nine hundred and fifteen. Present, The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO.,

vs.

JOSEPH J. SCOTT, as Collector, etc.

Order Sustaining Demurrer and Dismissing Cause.

Defendant's demurrer to the complaint heretofore heard and submitted, being now fully considered and the Court having filed its memorandum opinion, it is ordered that said demurrer be and the same is hereby sustained, and that this cause be and the same is hereby dismissed. [18]

At a stated term, to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Wednesday, the 29th day of December, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO.,

vs.

JOSEPH J. SCOTT, as Collector, etc.

Order for Judgment of Dismissal.

Upon motion of M. A. Thomas, Assistant United States Attorney, it is ordered that a judgment of dismissal, with costs to defendant, be entered herein.
[19]

*In the District Court of the United States, in and
for the Northern District of California Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Judgment of Dismissal on Sustaining Demurrer.

The Court having sustained defendant's demurrer to the complaint and ordered that this cause be dismissed, and having upon motion of M. A. Thomas, Assistant United States Attorney, attorney for defendant further ordered that judgment be entered herein accordingly, with costs to the defendant:

Now, therefore, by virtue of the law and by reason

of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action, that defendant go hereof without day, and that said defendant do have and recover of and from said plaintiff his costs herein expended taxed at \$14.20.

Judgment entered December 29, 1915.

WALTER B. MALING,
Clerk.

A true copy. Attest:

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed December 29, 1915. Walter B. Maling, Clerk. [20]

*In the District Court of the United States for the
Northern District of California.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corpn.,

vs.

JOSEPH J. SCOTT, as Collector, etc.

(Clerk's Certificate to Judgment-roll.)

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 29th day of December, 1915.

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed December 29, 1915. Walter B. Maling, Clerk. [21]

*In the District Court of the United States, Northern
District of California, Second Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
CO., a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

(Memorandum Opinion.)

HOYT, GIBBONS & FRENCH, Attorneys for
Plaintiff.

JOHN W. PRESTON, U. S. Attorney, for
Defendant.

VAN FLEET, District Judge:

The reasoning and conclusion of the Court in *Stratton's Independence, Limited, v. Howbert*, 131 U. S. 399, with consideration for all the implications to be drawn therefrom, in my judgment fully negative the theory upon which plaintiff's alleged cause of action proceeds, and preclude recovery upon the facts stated; and upon the authority of that case the demurrer must be sustained and the action dismissed.

[Endorsed]: Filed November 29, 1915. Walter B. Maling, Clerk. [22]

*In the District Court of the United States in and for
the Northern District of California.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

**Stipulation and Order Extending Time [to Prepare
Bill of Exceptions].**

It is hereby stipulated that the time of the above-named plaintiff to prepare its bill of exceptions on appeal in the above-entitled cause may be extended thirty (30) days from and after the 3d day of March, 1916.

Dated March 3d, 1916.

JNO. W. PRESTON,

Attorney for Defendant.

In accordance with the foregoing stipulation it is hereby ordered that the Goldfield Consolidated Mines Company, plaintiff in the above-entitled action, may have and is hereby given thirty (30) days from and after the 3d day of March, 1916, within which to prepare and file its bill of exceptions on appeal in the above-entitled action.

Dated this 3d day of March, 1916.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed March 3d, 1916. Walter B. Malin, Clerk. [23]

*In the District Court of the United States, in and
for the Northern District of California Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

**Bill of Exceptions on Behalf of The Goldfield
Consolidated Mines Company, a Corporation,
Plaintiff in Error Herein.**

BE IT REMEMBERED, that on the 10 day of August, A. D. 1914, at a stated term of said Court, begun and holden in the city of San Francisco, State of California, before his Honor, WILLIAM C. VAN FLEET, District Judge, the issue of law joined in the above-stated cause between the said parties upon the complaint of plaintiff and the demurrer of the defendant, as shown by the judgment-roll and record herein, came on to be heard before the said Judge, the parties aforesaid by their counsel having according to the statute in such cases made and provided and in accordance with the rules of said court, argued said cause and submitted their respective briefs thereon; and thereafter, on the 29th day of Novem-

ber, A. D. 1915, the said Court sustained the said demurrer to said complaint, and to each count thereof, to which ruling said plaintiff, The Goldfield Consolidated Mines Company, a corporation, duly excepted, and now assigns the said ruling as error, and in and by the order sustaining said demurrer, the said Court ordered that said cause be, and the same was thereby dismissed, to which ruling said plaintiff, The Goldfield Consolidated Mines Company, a corporation, duly excepted and now assigns the [24] said ruling as error; and,

BE IT REMEMBERED, that thereafter, to wit, on the 29th day of December, A. D. 1915, said Court gave, made, rendered and entered its order directing that judgment be entered in the above-entitled cause in favor of the defendant therein, and that said defendant do have and recover of and from the plaintiff his costs herein expended, to which order said plaintiff, The Goldfield Consolidated Mines Company, a corporation, noted and reserved an exception, and now assigns the giving, making, rendering and entering of said order as error; and

BE IT FURTHER REMEMBERED, that thereafter, on the 29th day of December, 1915, said Court made and entered its judgment dismissing said action and in favor of said defendant and to the effect that said defendant do have and recover of and from said plaintiff his costs herein expended, taxed in the sum of fourteen and 20/100 dollars, to which judgment plaintiff, The Goldfield Consolidated Mines Company, a corporation, duly excepted, and now as-

signs said judgment as error.

And to the end that justice and right may be done, the said plaintiff, The Goldfield Consolidated Mines Company, a corporation, hereby presents the foregoing as its bill of exception herein, and prays that this said bill of exceptions herein be settled, allowed and approved as true and correct in all particulars, and be made a part of the records in the above-entitled cause.

Dated San Francisco, California, March 27th, A. D. 1916.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY, a Corporation,
Plaintiff, and Plaintiff in Error Herein,
By HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,

Attorneys for said Plaintiff and Plaintiff in Error.

[25]

To Joseph J. Scott as Collector of Internal Revenue,
Fourth California District, Defendant, and Defendant in Error, and to John W. Preston, Esq.,
United States Attorney for the Northern District of California, at San Francisco, His Attorney:

Gentlemen: You will please take notice that the foregoing constitutes and is the bill of exceptions of the plaintiff, The Goldfield Consolidated Mines Company, a corporation, in the above-entitled cause, and that said plaintiff will ask the settlement, allowance and approval of the same.

March 27th, A. D. 1916.

HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT, -

Attorneys for Plaintiff and Plaintiff in Error.

[Stipulation Re Bill of Exceptions.]

IT IS HEREBY STIPULATED AND AGREED that the foregoing bill of exceptions is true and correct in all particulars, and that the same may be settled, allowed and approved by said Court without further notice, and that the same may be made a part of the records in the above-entitled cause.

Dated San Francisco, California, March 27th, A. D. 1916.

JOSEPH J. SCOTT,
As Collector of Internal Revenue, Fourth California District,

By JNO. W. PRESTON,
U. S. Attorney,
Attorney for Defendant and Defendant in Error herein.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY, a Corporation,
By HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,
Attorneys for Plaintiff and Plaintiff in Error Herein.
[26]

[Order Settling, Allowing and Approving Bill of Exceptions, etc.]

United States of America,
Northern District of California,—ss.

In the matter of the foregoing Bill of Exceptions, duly presented in time by the plaintiff, The Goldfield

Consolidated Mines Company, a corporation, plaintiff in error herein;

IT IS HEREBY ORDERED by said Court that said bill of exceptions be and the same is hereby settled, allowed and approved as true and correct in all particulars; and

IT IS HEREBY FURTHER ORDERED by said Court that said bill of exceptions be and the same is hereby made a part of the records in the above-entitled cause.

Given, made and dated at San Francisco, California, this 27th day of March, A. D. 1916.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Mar. 27, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [27]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Notice of Petition for Writ of Error.

To Joseph J. Scott, as Collector of Internal Revenue,
Fourth California District, and to Hon. John
W. Preston, United States Attorney for the
Northern District of California at San Fran-
cisco, His Attorney:

You, and each of you will please take notice hereby that on Monday, the 27th day of March, A. D. 1916, we shall present to the above-entitled court the petition for writ of error and assignment of errors herein, and shall move said Court to allow said writ of error and to direct the issuance of the same and of the citation herein. Copies of said petition for writ of error and of the assignment of errors herein are made a part of this notice attached hereto and served herewith.

Dated San Francisco, California, March 27th,
A. D. 1916.

THE GOLDFIELD MINES COMPANY,
a Corporation,

Petitioner and Plaintiff in Error.

By HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,

Its Attorneys.

Due service of the foregoing notice and receipt of copies of the various papers therein referred to are

hereby admitted this 27th day of March, A. D. 1916.

JOSEPH J. SCOTT,

As Collector of Internal Revenue, Fourth California District.

The Defendant in Error,
By JNO. W. PRESTON,
United States Attorney.

His Attorney. [28]

[Endorsed]: Filed. Mar. 27, 1916. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[29]

*In the District Court of the United States in and
for the Northern District of California Second
Division.*

No. 15,755.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Petition for Writ of Error.

Your petitioner above named, the Goldfield Consolidated Mines Company, a corporation, plaintiff in the above-entitled action, brings this its petition for a writ of error to the District Court of the United States in and for the Northern District of California, and in that behalf your petitioner shows.

On the 29th day of November, A. D., 1915, in the

above-entitled cause, there was made and entered in the above-entitled court an order sustaining the demurrer of the defendant in said action to the complaint of plaintiff therein and to each count thereof and dismissing said cause; and that thereafter, on the 29th day of December, A. D. 1915, there was made, given, rendered and entered in the above-entitled court and cause a judgment against your petitioner herein, namely, said plaintiff, the Goldfield Consolidated Mines Company, a corporation, wherein and whereby it was adjudged that said cause be, and the same was, dismissed and that the defendant in said action, the said Joseph J. Scott as Collector of Internal Revenue, Fourth California District, do have and recover of and from said plaintiff, your petitioner herein, his costs herein expended taxed in the sum of Fourteen and 20/100 Dollars. [30]

And your petitioner further shows that it is advised by counsel and avers that there was and is manifest error in the records and proceedings had in said cause, and in the making, giving, rendition and entry of said judgment, to the great injury and damage of your petitioner, all of which error will be more fully made to appear by an examination of the said record and by an examination of the bill of exceptions of your petitioner tendered and filed herein and in the assignment of errors hereinafter set out; and to that end thereafter that the said judgment and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner now prays that a

writ of error may be issued therefrom to the said District Court of the United States for the Northern District of California, returnable according to law and the practice of the court and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had in said cause, and that the same may be removed to the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be duly corrected; and full and speedy justice done your petitioner.

And your petitioner now makes the assignment of errors attached hereto upon which it will rely and which will be made to appear by return of the said record in obedience to said writ.

WHEREFORE, your petitioner prays the issuance of a writ as herein prayed, that the assignment of errors annexed hereto may be considered as plaintiff's assignment of errors upon the writ and that the judgment rendered in this cause and order sustaining said demurrer may be reversed and held for naught, and that the said cause be remanded for further proceedings, that your petitioner be awarded all necessary process and that [31] the amount of the supersedeas bond be fixed.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY, a Corporation,
Petitioner.

HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,

Attorneys for said Petitioner.

Service of the foregoing petition for writ of error and receipt of a copy thereof are hereby admitted this 27th day of March, A. D. 1916.

JOSEPH J. SCOTT,
As Collector of Internal Revenue, Fourth California
District,

By JNO. W. PRESTON,
U. S. Attorney,
His Attorney.

[Endorsed]: Filed Mar. 27, 1916. W. B. Mal-
ling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[32]

*In the District Court of the United States, in and
for the Northern District of California Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,
Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Reve-
nue, Fourth California District,
Defendant.

Assignment of Errors.

Now comes The Goldfield Consolidated Mines Com-
pany, a corporation, plaintiff in the above-entitled
cause and plaintiff in error herein, and having peti-
tioned for an order from said Court permitting it to
procure a writ of error to this Court, directed from
the United States Circuit Court of Appeals for the

Ninth Circuit, from the judgment made and entered in said cause against said plaintiff in error and petitioner herein, and files with its said petition the following assignments of error herein upon which it will rely for a reversal of said judgment upon said writ, and which said errors, and each and every of them, are to the great detriment injury and prejudice of the said plaintiff and in violation of its rights conferred upon it by law; and it says that in the record and proceedings in the above-entitled cause upon the hearing and determination thereof in the District Court of the United States for the Northern District of California; there is manifest error in this, to wit:

I.

That the said District Court erred in sustaining the demurrer of the defendant to the complaint of the plaintiff on file herein upon the grounds set forth in said demurrer. [33]

II.

That the said District Court erred in sustaining the demurrer of the defendant to the first count of said complaint upon the grounds set forth in said demurrer.

III.

That the said District Court erred in sustaining the demurrer of the defendant to the second count of said complaint upon the grounds set forth in said demurrer.

IV.

That the said District Court erred in ordering the said action to be dismissed without granting to the

plaintiff therein any opportunity to amend said complaint or to file an amended complaint.

V.

That said District Court erred in dismissing said action.

VI.

That said District Court erred in ordering and entering judgment in favor of the defendant in said action.

VII.

That said District Court erred in not giving, making and entering its order in said action overruling said demurrer to said complaint and to each of the counts thereof.

VIII.

That said District Court erred in not overruling the demurrer to the plaintiff's complaint and to each count thereof, inasmuch as it appeared from said complaint, and from each count thereof, that the plaintiff had complied with all the regulations and requirements of the Treasury Department governing the ascertaining of lawful deductions from gross income; that the said regulations were in all respects in accordance with law, and under the law and the regulations the deductions [34] claimed were legal and should not have been disallowed.

In order that the foregoing assignment or errors may appear of record, this plaintiff presents the same to the above-entitled court, and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided; and this plaintiff prays the re-

versal of the above-mentioned judgment heretofore given, rendered, made and entered, and filed by the above-entitled court and in the above-entitled action.

Dated San Francisco, California, March 27th,
A. D. 1916.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY, a Corporation,

Plaintiff,

By HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,

Its Attorneys.

United States of America,

Northern District of California,—ss.

I, the undersigned, one of the attorneys for the plaintiff in error herein, do hereby certify that the foregoing assignment or errors, is made on behalf of petitioner for a writ of error herein, and is in my opinion well taken, and the same now constitutes an assignment of errors upon the writ prayed for.

Dated San Francisco, California, March 27th,
A. D. 1916.

HENRY M. HOYT,

Of Attorneys for Plaintiff in Error.

Due service of the foregoing assignment of errors and receipt of a copy thereof are hereby admitted this 27th day of March, A. D. 1916.

JOSEPH J. SCOTT,

As Collector of Internal Revenue, Fourth California District,

Defendant.

By JNO. W. PRESTON,

U. S. Attorney,

His Attorney. [35]

[Endorsed]: Filed Mar. 27, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

*In the District Court of the United States, in the
Northern District of California.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Reve-
nue, Fourth California District,

Defendant.

**Order Allowing Writ of Error [and Fixing Amount
of Bond].**

On motion of H. M. Hoyt, of the firm of Hoyt, Gibbons & French, attorneys for plaintiff and plaintiff in error in the above-entitled cause, it is hereby ordered that a Writ of Error from the judgment heretofore filed and entered herein, be and the same is hereby allowed for review of said judgment by the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified transcript of the record, stipulations, exhibits and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

It is further ordered that the bond on the Writ of Error be fixed at the sum of Five Hundred Dollars, the same to act as a supersedeas bond and also as a bond for costs and damages caused or to be

caused by the prosecution of said Writ of Error.

Dated this 27th day of March, 1916.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Mar. 27, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [37]

*In the District Court of the United States, in and
for the Northern District of California.*

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN, that we, The Goldfield Consolidated Mines Company, as principal, and United States Fidelity and Guaranty Company, as surety, are held and firmly bound unto Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, in the sum of Five Hundred (\$500.00) Dollars, lawful money of the United States, to be paid to him, his heirs, executors, administrators, and successors in office; to which payment, well and truly to be made, we bind ourselves, and each of us, and our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 31st day of March, 1916.

WHEREAS, the above-named The Goldfield Consolidated Mines Company has prosecuted a writ of error to the United States Circuit Court of Appeals, Ninth Circuit, to reverse the judgment of the United States District Court, for the Northern District of California, in the above-entitled cause;

NOW, THEREFORE, the condition of this obligation is such that if the above named, The Goldfield Consolidated Mines Company, shall prosecute its said writ of error to effect and answer all damages and costs if it fails to make good its plea, [38] then this obligation shall be void; otherwise, to remain in full force and effect.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY,

By J. W. HUTCHINSON, [Seal]

Its General Manager.

Attest: A. H. HOWE,

Its Secretary.

UNITED STATES FIDELITY AND
GUARANTY COMPANY,

By B. F. CATOR.

By BRADLEY CARR. [Seal]

Attorneys in Fact.

State of Nevada,

County of Esmeralda,—ss.

On the 31st day of March, A. D. one thousand nine hundred and sixteen, personally appeared before me, Benj. J. Henley, a notary public in and for said county of Esmeralda, A. H. Howe and J. W. Hutchinson, known to me to be the Secretary and General Mgr. of the corporation that executed the fore-

going instrument, and upon oath did depose that he is the officer of said corporation as above designated; that he is acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signature; and that the said corporation executed the said instrument freely and voluntarily and for the [39] uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at my office in the county of Esmeralda, the day and year in this certificate first above written.

[Seal]

BENJ. J. HENLEY,

Notary Public in and for the County of Esmeralda,
State of Nevada.

My Commission expires Nov. 10, 1917.

Approved this 3d day of April, A. D. 1916.

WM. C. VAN FLEET,

United States District Judge.

[Endorsed]: Filed April 3d, 1916. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[40]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Reve-
nue, Fourth California District,

Defendant.

Praeceptum for Transcript of Record

To the Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the writ of error heretofore sued out and perfected to said court, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Complaint.
2. Demurrer to Complaint.
3. Order Sustaining Demurrer and Dismissing Cause, made November 29, A. D. 1915.
4. Order Directing Entry of Judgment, made December 29th, A. D. 1915.
5. Judgment.
6. Bill of Exceptions on Behalf of Plaintiff in Error.
7. Minutes of Court for the following dates, to

wit: November 29, A. D. 1915, and December 29, A. D. 1915.

8. Notice of Petition for Writ of Error.
9. Petition for Writ of Error.
10. Assignment of Errors.
11. Supersedeas and Cost Bond.
12. Order Allowing Writ of Error. [41]
13. Writ of Error.
14. Citation.
15. This Praecipe.
16. Stipulation and Order of March 3, 1916, Relating to Time for Preparing Bill of Exceptions.
17. Opinion filed Nov. 29, 1915.

Said transcript to be prepared as required by law and the rules of this Court and the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, and filed in the office of the clerk of the United States Circuit Court of Appeals before the 26 day of April, A. D. 1916.

Dated San Francisco, California, March 27, A. D. 1916.

THE GOLDFIELD CONSOLIDATED
MINES COMPANY, a Corporation,
Plaintiff in Error,
By HOYT, GIBBONS & FRENCH,
ALLEN G. WRIGHT,
Attorneys for Plaintiff in Error.

[Endorsed]: Filed April 3, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [42]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Clerk's Certificate to Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty-two (42) pages, numbered from 1 to 42, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, in conformity with the praecipe for record filed herein, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing record to writ of error is \$22.60; that said amount was paid by the plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court, this 12th day of April, A. D. 1916.

[Seal] WALTER B. MALING,
Clerk United States District Court, Northern Dis-
trict of California.

[Ten Cent Internal Revenue Stamp. Canceled
4/12/16. W. B. M.] [43]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Reve-
nue, Fourth California District,

Defendant.

Citation on Writ of Error.

United States of America,

Northern District of California,—ss.

To Joseph J. Scott, as Collector of Internal Revenue,
Fourth California District, Greeting:

You are hereby cited and admonished to be and
appear at a United States Circuit Court of Appeals
for the Ninth Circuit, to be holden in the city of
San Francisco in the State of California within
thirty (30) days from the date hereof, pursuant to
a writ of error duly issued and now on file in the
clerk's office of the United States District Court for
the Northern District of California, wherein The

Goldfield Consolidated Mines Company, a corporation, is plaintiff in error and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the writ of error mentioned should not be reversed, and why speedy justice should not be done the parties in that behalf. [44]

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of the United District Court for the Northern District of California, this 27th day of March, A. D. 1916.

WM. C. VAN FLEET,
United States District Judge.

Service of the foregoing citation and receipt of a copy thereof are hereby admitted this 3d day of April, A. D. 1916.

JOSEPH J. SCOTT,
As Collector of Internal Revenue, Fourth California
District,

By JNO. W. PRESTON,
U. S. Attorney,
His Attorney. [45]

[Endorsed]: No. 15,775. In the District Court of the United States, Northern District of California, 2d Div. The Goldfield Consolidated Mines Company, a Corporation, Plaintiff, vs. Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, Defendant. Citation on Writ of Error. Filed Apr. 3, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,775.

THE GOLDFIELD CONSOLIDATED MINES
COMPANY, a Corporation,

Plaintiff,

vs.

JOSEPH J. SCOTT, as Collector of Internal Revenue,
Fourth California District,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the Honorable, the Judge of the District Court
of the United States for the Northern District
of California, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court before you, or some of you,
between The Goldfield Consolidated Mines Com-
pany, a corporation, plaintiff in error, and Joseph
J. Scott as Collector of Internal Revenue, Fourth
California District, defendant in error, a manifest
error hath happened, to the great damage of said
plaintiff in error, as by its complaint appears;

We, being willing that error, if any hath been,
should be duly corrected and full and speedy justice
done to the party aforesaid in this behalf, do com-
mand you, if judgment be therein given, that then,
under your seal, distinctly and [46] openly, you

send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco in the State of California within (30) days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, the 27th day of March, in the year of our Lord, one thousand nine hundred and sixteen.

[Seal]

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by:

WM. C. VAN FLEET,
Judge of Said Court.

Service of the foregoing writ of error and receipt of a copy thereof, are hereby admitted, this 3d day of April, A. D. 1916.

JOSEPH J. SCOTT,
As Collector of Internal Revenue, Fourth California
District.

By JNO W. PRESTON,
U. S. Attorney,
His Attorney. [47]

Return to Writ of Error.

The answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was, on the 3d day of April, A. D. 1916, duly lodged in the case in this Court for the within named defendant in error.

By the Court:

[Seal] WALTER B. MALING,
Clerk United States District Court, Northern District of California.

By _____

Deputy Clerk. [48]

[Endorsed]: No. 15,775. District Court of the United States, Northern District of California, Second Division. The Goldfield Consolidated Mines Company, a Corporation, Plaintiff, vs. Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, Defendant. Writ of Error. Filed Apr. 3, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2777. United States Circuit Court of Appeals for the Ninth Circuit. The Goldfield Consolidated Mines Company, a Corporation, Plaintiff in Error, vs. Joseph J. Scott, as Collector of Internal Revenue, Fourth California District, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed April 13, 1916.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.